



Don Quixote's Lawyer

by John D. Whitaker

Occasionally in my practice I encounter people who remind me of Don Quixote. I am sure you all remember the story of Don Quixote. He is a character in a book written by Miguel de Cervantes. Don Quixote is a story about a country gentleman who becomes obsessed with books about chivalry. Basically he begins to hallucinate that he is actually a knight in shining armor. He sees the world as a very moral place where good must always triumph over evil. Ultimately, he launches his own quest where he imagines himself being confronted with challenges like those faced by the knights he had been reading about. In one of the challenges he faces what he thinks is a giant, but is in reality a windmill. This is where the term "tilting at windmills" comes from. This term means that one is fighting an unwinnable or futile battle. Don Quixote sees himself as acting out of chivalry and nobility but his actions are in reality based upon heroic or idealistic justifications that are impractical and unattainable.

I see this most often when we are in settlement discussions in a case. Usually my client has been very badly injured, or perhaps has filed suit for a loved one who has been wrongfully killed by the negligence of someone else. Frequently these people are very sad and they want their lives to go back to normal. They want their injuries to be cured; or they want their loved one to be brought back to life. Unfortunately a courtroom cannot do either. It would be great if we could just have the jury place hands on the injured person and make it all better, but it does not work that way. The only way a courtroom can have an affect on an injury is to award a sum of money. This may sound crass, but that is how the system works.

When injured people begin settlement negotiations it is fairly common for them to be unrealistically high in their settlement demands. Adjusters and defense



lawyers like to think that this is because of greed, but it has been my experience that it almost never is. These people have been hurt in some way and they are angry about it. The anger may be below the surface but I guarantee it is there, and it is playing a major part in the settlement negotiations. No one wants to look at the real pain or anger in the case because it makes everyone feel uncomfortable. The defendants would prefer to just talk about money. The injured Don Quixote wants to focus on right and wrong. He wants to triumph over evil, but

this is not an available solution in a lawsuit. Ultimately, it can only be about money. In the end, the decision to settle a case is primarily a business decision. When I am representing Don Quixote, I try to encourage him to negotiate based upon his best interest, not what he believes he has coming as a matter of right.

Luckily, Don Quixote had a friend that goes with him on the quest. He picks his neighbor Sancho Panza to be his squire and it is his job to point out that windmills are not giants. Just like Sancho, a lawyer's job is to help keep the client focused on the realities of the situation.

Don't get me wrong, right and wrong do matter, and when they really do, it may be that a trial is the only answer. But in most cases avoiding a trial is a very desirable outcome. Litigation has enormous risks and is very expensive. I have yet to walk out of a two-week jury trial and have my client tell me that they had so much fun they can't wait to do it again. In fact, most times they look at me and ask how on earth could I do this for a living. Trials are very rarely in anyone's best interest. The financial and emotional costs of a trial are enormous. If you do take a case to trial it should not be because you want something the jury cannot give you. Tilting at windmills is not an effective litigation strategy. The old saying that discretion is the better part of valor should always be a consideration when Don Quixote is your client.